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**In the Supreme Court of the United States**

**OCTOBER TERM, 1949.**

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**FEDERAL POWER COMMISSION,**

*Petitioner,*

v.

**THE EAST OHIO GAS COMPANY,**

**STATE OF OHIO,**

**THE PUBLIC UTILITIES COMMISSION OF OHIO,**

*Respondents.*

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**ON WRIT OF CERTIORARI**

**TO THE UNITED STATES COURT OF APPEALS**

**FOR THE DISTRICT OF COLUMBIA CIRCUIT.**

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**BRIEF FOR THE STATE OF OHIO**

**AND**

**THE PUBLIC UTILITIES COMMISSION OF OHIO.**

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## **OPINIONS BELOW.**

The opinion of the Federal Power Commission (R. 170-180), Petitioner herein, is reported at 74 PUR (NS) 256 (1947). The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 197-206) is reported at 173 F. 2d 429 (1949).

## **JURISDICTION.**

The jurisdiction of this Court was invoked by Petitioner, hereafter called FPC, under Section 19(b) of the Natural Gas Act and under 28 U. S. C. 1254(1). This Court issued its order granting certiorari on June 20, 1949 (R. 210), *Federal Power Commission v. East Ohio Gas Co., et al.*, 337 U. S. 937 (1949).

## QUESTIONS PRESENTED.

As in the court below, the FPC begins its argument for extending its own jurisdiction by referring only to the various East Ohio lines which bring home, from at or near the Ohio borders, East Ohio's out-of-state purchased gas. The basic question is not the effect of East Ohio's ownership and operation of these particular 650 miles<sup>1</sup> out of over 8,000 miles of lines in Ohio (R. 88) but, as the United States Court of Appeals for the District of Columbia Circuit said (R. 198):

"The very heart of the instant controversy is the definition of the nature of East Ohio's business, petitioner and the intervenors. [State of Ohio and The Public Utilities Commission of Ohio] claiming that East Ohio is solely engaged in the business of direct, local distribution of natural gas in the State of Ohio, and respondent [FPC] claiming that petitioner is in the business of transporting gas in interstate commerce.  
\* \* \*

The questions vital to the State of Ohio and the Ohio Commission which are actually before this Court are:

(1) Whether the court below was correct in holding (R. 202):

"Moreover, the [Natural Gas] Act, in Section 1(b), *supra*, expressly states that it shall *not* apply 'to any other transportation or sale of natural gas or the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.' Not only does East Ohio produce or gather natural gas, but it strongly urges, and we believe the previously discussed facts clearly demonstrate, that it is engaged *solely* in the local distribution of natural gas to local consumers. *All* of its property,

<sup>1</sup> These are multiple lines of about 100 miles. The longest is from the Cleveland-Akron area to Maumee, near Toledo, Ohio—about 114 miles (Ex. 4 (Map), Tr. Vol. I, p. 108A, R. 91; FPC Brief, p. 34, fn. 19).

including the 650 miles of high-pressure lines, is devoted to that sole purpose. Thus, once again, the very words of the Act exclude petitioner from its administration."

and (R. 204):

"All of the gas coming to East Ohio from out of state, gas furnished primarily by Hope and Panhandle, is already completely subject to federal regulation and comes to East Ohio at a rate set by the federal commission. There is thus obviously no gap in regulation in this case and the attempted assumption of jurisdiction by the federal commission in this instance, far from supplementing and reinforcing, constitutes unnecessary, undesirable and unintended usurpation of state regulatory authority which cannot be justified by either the terms of the Act or its legislative history."

(2) Whether—and this was not passed on below—the FPC orders here involved, and any provisions of the Natural Gas Act construed to authorize their issuance, constitute an invasion of the powers reserved to the State of Ohio under the Tenth Amendment to the Constitution of the United States and an invalid extension of the powers delegated to the federal government by Article I, Section 8, thereof.

### **STATUTE INVOLVED.**

What is involved is the proper extent of the federal jurisdiction of the FPC under the Natural Gas Act of 1938 (Act of June 21, 1938, c. 556, 52 Stat. 821, as amended by Act of February 7, 1942, c. 49, 56 Stat. 83, 15 U. S. C. 717 *et seq.*). Copies of this Act accompany the FPC's brief. For the convenience of the Court we submit with this brief a printed pamphlet setting forth the Laws of the State of Ohio administered by The Public Utilities Commission of Ohio.

## STATEMENT.

It was with considerable surprise that the Ohio Commission learned that late in 1938 the City of Cleveland, which was then before it in a rate litigation with East Ohio, had requested the FPC to subject East Ohio to FPC jurisdiction and to investigate and determine a part of the costs of gas service in Cleveland, all of which the Ohio Commission was then investigating and determining (R. 100-101).<sup>2</sup>

The Ohio Commission did not then and does not now need federal assistance in investigating and determining East Ohio's expenses in moving its gas from the Ohio River to Cleveland. On January 10 and 20, 1939, the Ohio Commission concluded this pending rate litigation, determined all necessary costs and fixed a schedule for East Ohio's rates in Cleveland. *Re East Ohio Gas Company v. City of Cleveland*, 27 PUR (NS) 387 (1939). Its decision was subsequently affirmed by the Supreme Court of Ohio. *The East Ohio Gas Co. v. Public Utilities Commission of Ohio, City of Cleveland v. Public Utilities Commission* (Two Cases), 137 Ohio St. 225, 28 N. E. 2d 599 (1940). Nevertheless on February 14, 1939, the FPC *ex parte*, without notice to the State of Ohio or the Ohio Commission and without any hearing, determined East Ohio to be a "natural-gas company" under the Natural Gas Act and subject to FPC jurisdiction. It ordered East Ohio to file an inventory of its lines and facilities from Cleveland to the Ohio River, a statement of their original cost, and 1936, 1937 and 1938 operating expenses pertaining thereto, as well as certain other information (R. 100-103).

In East Ohio's petition to the United States Circuit Court of Appeals for the Sixth Circuit for review of this unnecessary FPC action (*East Ohio Gas Co. v. Federal Power Commission*, 115 F. 2d 385 (1940)) the State of

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<sup>2</sup> See *East Ohio Gas Co. v. The Federal Power Commission*, 115 F. 2d 385, 386 (C. C. A. 6th 1940).

Ohio and the Ohio commission filed a brief *amicus curiae* pointing out that the plain intent of Congress in the Natural Gas Act was to occupy the field of interstate wholesale service in which this Court had held that the States may not act, and not to disturb the States in the exercise of their traditional jurisdiction over local retail gas companies. Ohio and the Ohio Commission there pointed out as to this summary assertion of FPC jurisdiction, and here reassert:

"This is nothing less than the opening wedge in a thinly veiled effort to take over the regulatory jurisdiction and functions of both your orators."

The FPC thereupon claimed that its orders against East Ohio were not reviewable orders, and the court so held. (*Id.*, p. 389.)

We say advisedly that this attempt by the FPC to subject East Ohio to its jurisdiction was surprising. The Ohio Commission with other State public utilities commissions through the National Association of Railroad and Utilities Commissioners (NARUC) had participated in the framing of the Natural Gas Act.<sup>4</sup> Mr. John E. Benton, then General Solicitor of the NARUC, testified frequently on the various bills that ultimately became the Natural Gas Act. Throughout the various drafts he kept attention focused on the real objective of this legislation. For example: "We ask to have amendments adopted to this bill which will make it clear that Congress intends to regulate the whole-sale interstate transactions and nothing else, and we think that will cover the entire field." (Hearings on H. R. 5423, 74th Cong., 1st Sess., at 1639.) It was accordingly well understood at the time of the passage of the Natural Gas Act,

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<sup>4</sup> Dozier A. DeVane, *Highlights of Legislative History of the Federal Power Act of 1935 and The Natural Gas Act of 1938*, 14 GEO. WASH. L. REV. 30, 39 (1945).

as this Court has since frequently stated,<sup>5</sup> that the Act was ultimately drawn so as to take no authority from State commissions and so as to complement and in no manner usurp State regulatory authority.

Nothing further developed, except that in 1942, during the pendency of another East Ohio rate proceeding before the Ohio Commission (*The East Ohio Gas Co. v. City of Cleveland*, 56 PUR (NS) 73 (1944)), Cleveland and two adjoining suburbs again requested FPC intervention (R. 114, 109, 119).

Not until February of 1946 did the FPC move actively again (R. 129-136), although Judge Simons of the Sixth Circuit had suggested in 1940 that if so minded the FPC, pursuant to Sections 20 and 22 of the Natural Gas Act, could bring a federal district court action against East Ohio to enforce its orders (115 F. 2d, 389). We surmise that the FPC hesitated to have the jurisdictional facts determined independently by a federal court and preferred a procedure whereby it could make a finding of facts in support of its own jurisdiction and orders.<sup>6</sup> By 1946 the theory of federal jurisdiction asserted by the FPC against the regulatory authority of the State of Ohio and the Ohio Commission and against East Ohio had become known as the "stub line" theory. It was generally recognized that this theory would subject to FPC jurisdiction all natural and mixed gas distributing companies throughout the nation whenever they connected their distribution

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<sup>5</sup> *Illinois Natural Gas Co. v. Central Illinois Public Service Co.*, 314 U. S. 498 (1942); *Public Utilities Commission v. United Fuel Gas Co.*, 317 U. S. 456, 467 (1943); *Federal Power Commission v. Hope Natural Gas Co.*, 320 U. S. 591, 609 (1944); *Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana*, 332 U. S. 507, 517-518 (1947).

<sup>6</sup> Note the claims based on this strategy in the FPC brief here, pp. 17 (last sentence), 58, 76, 80.

systems "to an interstate pipe line for the purpose of receiving gas from the pipe line company."<sup>7</sup>

Ohio promptly intervened in this 1946 revival of the FPC's 1939 proceedings and has since actively participated as a party both before the FPC and the United States Court of Appeals for the District of Columbia Circuit (R. 163-169, 188-195, 201).

Thus Ohio and the Ohio Commission have from the beginning vigorously denied that East Ohio or, for that matter, any company conducting only a local distributing utility service solely within the confines of the State of Ohio, is a "natural-gas company" which Congress intended or decreed should be subject to federal regulatory jurisdiction under the Natural Gas Act. The reason for this position is obvious and was well summarized by the court below as follows (R. 199):

"The Ohio Commission was created in 1911. Ever since that date it has repeatedly and continuously exercised its regulatory powers over all the business activities and property of petitioner. This regulation has included the setting of numerous rates, the supervision of acquisitions and sale of property and security issues, the control of accounting practices, inauguration and termination of service, examining service complaints, and requiring the submission of detailed reports to the Ohio Commission. Abundant state statutory authority exists for this regulation by the Ohio Commission and the state regulation authorized is mandatory, not permissive. As of the time of the hearings before the Commission in this case there had been a total of 258 formal regulatory proceedings before the Ohio Commission involving East Ohio. There can be little doubt that petitioner is now and has been very thoroughly and completely regulated by the Ohio Commission."

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<sup>7</sup> Wheat, "The 'stub line' problem" in *Administration by the Federal Power Commission of the Certificate Provisions of the Natural Gas Act*, 14 GEO. WASH. L. REV. 194, 207-208 (1945).

We observe that in its attempt to invade and duplicate this long established Ohio jurisdiction and regulation the FPC in its so-called "Statement" stresses the single fact that there is an interstate movement<sup>a</sup> in the lines by which East Ohio brings home gas purchased from interstate companies to the streets of the great populated areas of northeastern Ohio which it serves. There is only a bare mention of the fact that East Ohio sells no gas for resale.

The facts are that East Ohio's sole business is the local distribution of gas in Ohio and all of its property is used solely and exclusively for that purpose (R. 25-28). Its property, its gas purchases and sales, its gas receipts and deliveries, are all in Ohio (R. 13, 25). If its distribution business were terminated it would have no use whatever for any of its property (R. 25). It is not a so-called "pipeline company" and does not transport natural gas for hire (R. 23). *Every foot of gas that enters the East Ohio system is either produced or purchased by it from independent producers in Ohio (R. 89) or purchased by it in Ohio from Hope Natural Gas Company or Panhandle Eastern Pipe Line Company at rates fixed by the FPC (R. 89, 17-22); and every foot of this gas has one purpose, and only one purpose, in the East Ohio operation—local distribution for domestic, commercial and industrial use.*

The center of East Ohio's local distribution to its 551,000 consumers in 69 northeastern Ohio municipalities with a population of over 2,000,000 is at its so-called Gross Farm Station located south of Cleveland and Akron, north of Canton and Massillon, and west of Youngstown and Warren (Map, R. 91). At Gross Farm Station the gas

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<sup>a</sup> The FPC Brief mistakes Ohio's position below (p. 24, fn. 12; p. 33). There is technically an interstate movement of gas in East Ohio's lines but East Ohio is not engaged in the business of interstate transportation—it transports no gas for others for hire and no gas destined for sale at wholesale—which was intended to be subjected to FPC jurisdiction. The only business of East Ohio is intrastate commerce, local retail sales.

is or can be controlled for all parts of the system, for it is there that most of the local and out-of-state gas is converged either for immediate distribution or for storage in large underground storage areas which were developed for that purpose from former Ohio producing wells. At Gross Farm Station there are many pipe lines operating under various pressures, valve stations, regulator stations, compressing stations, etc. From this point gas is distributed in all directions depending on the needs at the particular time both up and down the lines. At other times, depending on the need of the flow of gas, out-of-state gas goes directly to distributing areas in Cleveland and other large cities in the territory without additional pumping from Gross Farm Station (R. 22-23, 36-37, 58-59).

Except that it distributes gas to 69 Ohio communities rather than to a lesser number, and that its "stub lines" to its interstate sellers are somewhat longer than most other Ohio retail distributing companies, East Ohio's business and operations are exactly like those of all of the other local Ohio retail distributing companies.

There operate in Ohio, or into Ohio, some 66 companies handling natural gas.<sup>9</sup> Of these, 14 are companies transporting gas from out of Ohio and wholesaling it in Ohio (and of course subject to the jurisdiction of the FPC as "natural-gas companies"),<sup>10</sup> like Panhandle Eastern Pipe Line Company, Tennessee Gas Transmission Company, Texas Eastern Transmission Company and United Fuel Gas Company.<sup>11</sup> A few retail only Ohio produced gas, but

<sup>9</sup> Federal Power Commission, DIRECTORY OF ELECTRIC AND GAS UTILITIES IN THE UNITED STATES 338-363 (1948).

<sup>10</sup> Federal Power Commission, STATISTICS OF NATURAL GAS COMPANIES 506 (1947).

<sup>11</sup> One or two of these wholesaling "natural-gas" companies also engage directly in local distribution in Ohio, a situation which makes considerable duplicate jurisdiction and regulation unavoidable. To avoid confusion, conflict and expense to consumers in these cases the Ohio Commission must substantially abdicate in favor of the FPC.

the remaining 40 companies supplement their local supply with gas purchased from interstate wholesale companies. All of these necessarily have "stub lines" of some length connecting with their sources of out-of-state gas.<sup>12</sup>

Except for a few rural and small-town areas served with purely Ohio produced gas, *it is apparent that the effect of approval by this Court of the FPC's "stub line" theory would be to subject substantially all of the natural gas distributing companies in Ohio to the jurisdiction of the FPC.* From the standpoint of a State commission, with years of practical day-to-day regulatory experience, such a position as the FPC here asserts is unwarranted. The FPC's theory that once out-of-state gas is injected into and carried in the pipe line system of a purely local intrastate company distributing gas at retail such a company develops a national interest which subjects it to federal regulation, will place an undue burden on practically every gas company, large or small, in the State of Ohio and on their Ohio consumers. This is exactly what Congress did not intend and exactly what the Natural Gas Act clearly says will not be the case, as we later point out.

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<sup>12</sup> See the "Transmission Line" lengths reported in the Federal Power Commission's DIRECTORY, *supra*, note 9.

## ARGUMENT.

### I. THE JURISDICTIONAL PROVISIONS OF THE NATURAL GAS ACT EXCLUDE FEDERAL POWER COMMISSION JURISDICTION AND PRESERVE OHIO'S JURISDICTION OVER EAST OHIO.

#### A. Section 1 of the Act Defines the Limits of FPC Jurisdiction and by its Terms Excludes FPC Jurisdiction over East Ohio.

We need not labor the point that the Natural Gas Act was not intended to extend the jurisdiction of the FPC to the limit of federal constitutional power over the natural gas industry. Accordingly limitations on its jurisdiction, so that it would function to complement that of the State regulatory bodies, were expressed in Section 1 of the Act and particularly in Section 1(b). This Court has several times said just that. *Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana*, 332 U. S. 507, 516 (1947); *Federal Power Commission v. Panhandle Eastern Pipe Line Co.*, 337 U. S. 498, 502-503 (1949).

Section 1 of the Act (52 Stat. 821 (1938), as amended, 56 Stat. 83 (1942), 15 U. S. C. 717, *et seq.*) reads as follows:

"Section 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

"(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale,

*but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.” (Italics ours)*

1. Even to one not familiar with the history of the Act it is obvious that the most specific of the words in Section 1(b) are those which exclude from the operations of the Act “the local distribution of natural gas” and “the facilities used for such distribution.” The only other words almost as specific are “the sale in interstate commerce of natural gas for resale for ultimate public consumption.” The words “transportation of natural gas in interstate commerce” are most general and resort must be had, as in the FPC’s brief here (pp. 33-42), to the decisions of this Court as to the probable meaning of these general words. On ordinary rules of statutory construction the more specific governs the more general.<sup>13</sup>

There can, for example, be no doubt that these specific words as a matter of ordinary statutory construction mean that a local distributing company operating in a town straddling the Ohio-Pennsylvania or Ohio-Indiana border is exempt from the jurisdiction of the FPC under the Natural Gas Act, although cases will support the proposition that the passage of gas on a street main from Pennsylvania or Indiana to Ohio or vice versa constitutes transportation in interstate commerce.

It is equally obvious, and the record here abundantly shows, as the court below found, that East Ohio is engaged in the local distribution of natural gas solely in Ohio and that its so-called transmission lines as well as all of its other facilities by which it handles gas once it is produced, gathered or purchased are “facilities used for such distribution.” Some of these facilities, the FPC claims, are

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<sup>13</sup> *McEvoy v. United States*, 322 U. S. 102 (1944).

used to move gas in interstate commerce as the cases have defined such movement. Even so, that use is solely for local distribution, as in the case of a town straddling a State line, and therefore cannot alter their character as facilities used for local distribution.<sup>14</sup>

The only argument the FPC brief makes (pp. 17, 54-55) against the simple application of the plain words of Section 1(b) is to say that practically all facilities in the natural gas industry have local distribution or sales to industrials "as their ultimate purpose," and that under the decision below the Natural Gas Act would be largely ineffective. This is nonsense. The Natural Gas Act was not framed to confer jurisdiction on the FPC over natural gas as such, but for the practical purpose of having the FPC regulate the rates and other practices of interstate wholesaling and pipe line companies handling that gas.

No interstate wholesaling or pipe line company, such as the Act intended to regulate federally, can say that its facilities are used for local distribution when its facilities are used by such company for the resale of gas for ultimate public consumption or to transport the gas of others for hire. Such interstate companies are themselves not engaged in local distribution and could not claim that they use their facilities for that purpose. On the other hand, in the case of East Ohio and the hundreds of local distributing companies like it that connect by "stub lines" with interstate pipe lines, their business is that of local distribution and all of their facilities, including these "stub lines," are obviously used for that immediate purpose.

2. It is not only true that East Ohio's operations and facilities are specifically excluded from the operations of the Natural Gas Act by the *specific* words of Section 1(b), but it is also true that any rational consideration of the

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<sup>14</sup> Such transportation purely incidental to local distribution, as is East Ohio's, obviously falls within "other transportation" as these words are used in Section 1(b).

*general* words in that section fail to include East Ohio under FPC jurisdiction.

The general words "transportation of natural gas in interstate commerce" and "engaged in such transportation" and the words "natural-gas companies engaged in such transportation" necessarily require some construction. The definitions in Section 2 are of no help. Section 2(7) merely repeats the usual federal statutory definition of interstate commerce and Section 2(6) merely includes the word "person" in the term "natural-gas companies." Literally, a railroad carrying a cylinder of natural gas for testing at a laboratory across a State line, or a technician carrying such a cylinder across a State line in his automobile, are each transporting gas in interstate commerce. So is a farmer with a well in Indiana and his house and barn where he uses the gas in Ohio. So is an industrial plant with its wells on one side of the state line and its glass-making or other facilities where the gas is used on the other side. So is a steel mill or glass plant which runs its own line for some miles to tap into an interstate pipe line. Yet obviously none of these persons were intended to be covered by these general words in the Act.

We say "obviously" because the key to the meaning of these *general* words appears in Section 1(a) where it is stated that "the *business* of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest" (Italics ours). The "business" of transporting obviously refers to a public utility business—a job done for others and repeatedly and for hire. So interpreted, the general words "transportation of natural gas in interstate commerce" in Section 1(b) suddenly make great sense and dissipate all of the confusion and overlapping of federal and State jurisdiction which follow from the FPC's "stub line" theory as here urged.

The purely retail distributing companies in various States, such as East Ohio and many others in Ohio, are

not carriers for hire of either local or interstate gas. They build lines within the State solely to bring gas which they have produced or purchased at wholesale to their consumers' meters at retail. They are all, and all their facilities are, subject to complete State regulation because their operations are essentially of local and not national concern.<sup>15</sup> There is no rate or service which they charge or perform for others in connection with any "interstate transportation" and there is therefore nothing which requires federal regulation because the State cannot regulate.

It seems to us more than plain that any proper application of the specific exclusionary words of Section 1(b), and any common-sense consideration of its general words, inevitably results in the conclusion that the "stub line"

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<sup>15</sup> We find the FPC a little less than frank in arguing (Brief, p. 52): "Under the *East Ohio v. Tax Commission* case read in conjunction with the *Attleboro* case the Ohio Commission was without power constitutionally to regulate these [pipeline] activities of East Ohio." The *Attleboro* case involved a sale in interstate commerce for resale and the interests of consumers in two States were involved. It has always been true that where the local interest overbalances the necessity for national uniformity, States may regulate even interstate commerce in the absence of Congressional regulation. (*Cooley v. Wardens*, 12 How. 299 (1851)). In the case of East Ohio the only interests whatsoever are local and affect consumers in only one State. The further FPC argument (Brief, pp. 23-24, 31) that "East Ohio, for reasons best known to it, has acquiesced in the Ohio Commission's assertion and exercise" of its complete jurisdiction is indeed extraordinary. The reason for East Ohio's so-called acquiescence is the doctrine recently stated by this Court in *Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana*, 332 U. S. 507, 523 (1947); to-wit: State power to regulate interstate commerce in the absence of Congressional occupation of the field is "the power to require that it be done on terms reasonably related to the necessity for protecting the local interests on which the power rests."

It is not unimportant that all natural gas distributing companies throughout the country "acquiesced" in State regulation of their "stub lines." Litigation in the natural gas field has been prolific, and no one that we know of has ever asserted as against State power the claims made by the FPC here.

theory and its application to East Ohio are wholly unsound. It is equally obvious that this represents an attempt by the FPC, through intricate arguments, to expand its federal jurisdiction and encroach upon—and well nigh annihilate—State regulation of local distributing companies. In its petition for a writ of certiorari here the FPC revealed the great reach of its “stub line” theory. There it said (p. 19):

“There are now pending before the Commission 43 similar cases which involve, as here, transportation in interstate commerce wholly within a single state.”

If all of these cases involve, as does this case, simply transportation by “stub lines” for local distribution and not transportation for others, it is obvious that the FPC’s bid for power illustrated here and in these 43 pending cases should be stopped once and for all by applying here the plain intent and obvious meaning of Section 1 of the Act.

**B. The Legislative History of the Natural Gas Act Shows That the FPC Was Not to Have Jurisdiction over Local Distributing Companies Like East Ohio and the States Were to Retain Their Former Jurisdiction.**

This Court in other cases has so thoroughly reviewed the legislative history<sup>10</sup> of the Natural Gas Act that we need not go into that history in detail. We do point out that as a result of this analysis this Court has concluded

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<sup>10</sup> Hearings on H. R. 5423 before the House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess., early in 1935; Hearings on H. R. 11662 before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 74th Cong., 2d Sess., in April, 1936; and Hearings on H. R. 4008 before the House Committee on Interstate and Foreign Commerce, 75th Cong., 1st Sess., in March 1937. H. R. 4008 was reported out as H. R. 6586 and was accompanied by House Report No. 709, 75th Cong., 1st Sess. The FPC (Brief fn. 12, p. 24) has pointed out that all of these hearings are relevant in determining the Congressional intention in the enactment of the Natural Gas Act.

(*Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana*, 332 U. S. 507, 517 (1947)):

"The Act, though extending federal regulation had no purpose or effect to cut down state power. On the contrary, perhaps its primary purpose was to aid in making state regulation effective, by adding the weight of federal regulation to supplement and reinforce it in the gap created by the prior decisions."

This gap, of course, was obvious to all those interested in this new federal legislation—the "impotence of the states to act in relation to sales for resale by interstate carriers" (332 U. S., 516) and the similar impotence with respect to interstate transportation charges by interstate carriers of gas. As we have heretofore noted, the State commissions, represented by the NARUC, were most anxious that this gap be filled. At the same time they recognized that in the process of drafting legislation vigilance would have to be used to see that language was employed which would be appropriate only to fill the gap and not to cut down existing State powers. This Court has already referred to this participation by the State commissions (332 U. S., 518-519, fn. 14).

We accordingly supplement what this Court has heretofore noted with respect to the legislative history with the following additional items which all serve to reinforce the views heretofore expressed:

1. Both in the hearings on H. R. 11162 and H. R. 4008, Mr. Benton, solicitor for the NARUC, presented an NARUC resolution supporting the purpose of the bill and in connection therewith stating "that Congress be asked to limit the jurisdiction granted strictly to gas transmitted and sold wholesale for resale and that such legislation be so drawn as in no way to limit or impair the power of the states to regulate intrastate and local service. \* \* \* (Hearings on H. R. 11662, p. 85; Hearings on H. R. 4008, p. 22.)"

2. In the hearings on H. R. 11662, Representative Cooper began to ask Mr. DeVane, the FPC solicitor, some questions about Section 7(a) and its effect; but the questions were brushed aside and Mr. DeVane explained that the real purpose of the Act and the purpose which should be considered by the Committee was the regulation of interstate wholesale service:

“MR. DEVANE. Yes; but that is not your real problem, Mr. Cooper. The real question we are dealing with here is: there is a complete hiatus in the regulation of rates charged by these pipe-line companies to the local distributors of gas throughout the United States, and we are trying to augment State regulation by conferring authority upon a Federal agency to fix those rates.” (Hearings on H. R. 11662, p. 41.)

3. Mr. Benton told the Committee that it was his understanding that the draftsmen of the bill had intended to regulate only interstate wholesale service:

“\* \* \* Now, as I have said, the purpose of those who drew this bill undoubtedly was to preserve the field of local regulation to the State authorities. Federal regulation is aimed to be imposed only upon the companies which sell gas in interstate commerce to other companies for ultimate resale to the public, and upon those companies only to the extent of their transportation and sale in interstate commerce to such other companies.

“Federal regulation is aimed to be imposed only upon those companies which sell gas in interstate commerce at wholesale. \* \* \*.” (Hearings on H. R. 11662, p. 90.)

4. When the bill had been redrafted as H. R. 4008 and was again considered in Committee, Representative Lea, the Chairman of the Committee and the man largely responsible for the Natural Gas Act, said that—“Of course, the purpose of this bill is to reach those sales where gas is transported across State lines for the purposes of resale. \* \* \*.” (Hearings on H. R. 4008, p. 105.)

After the close of the hearings, H. R. 4008 was changed slightly and was reported to the House as H. R. 6586. The debate on the bill was held on July 1, 1937. Representative Halleck, a member of the House Committee who had taken a very active part in the hearings, stated that he wanted to "add a few words which may explain the purposes [of the bill] a little more clearly to the membership of the House." (81 Cong. Rec. 6723 (1937.)) He explained that a gap had previously existed in the interstate sale of gas, that this regulatory gap had greatly hampered the State commissions, and that the bill sought to regulate interstate wholesale prices. He also discussed the regulation of transportation and pointed out that though control over the distributing companies had been effective, adequate consumer rate regulation was greatly hampered by the fact that "in many instances the transportation company, transporting in interstate commerce, has charged a rate which is higher than is deemed fair and reasonable." *Ibid.*

5. Mr. Benton for the NARUC believed that the job which had been undertaken, namely to fill the gap as to interstate wholesale service and at the same time to preserve all existing State powers over local companies, had been accomplished. After the hearing on H. R. 4008 Mr. Benton wrote to Representative Lea stating that a joint meeting of the NARUC Executive Committee and its Committee on Legislation had been held and that at this joint meeting the committees had considered whether or not H. R. 4008 "will provide regulation of the character requested in the resolution heretofore adopted by this association, and presented at the hearing on March 24, 1946." Mr. Benton concluded: "A resolution was unanimously adopted endorsing H. R. 4008 amended as requested on behalf of this association at the hearing on March 24." (Hearings on H. R. 4008, p. 141.) The requested amendments (*Id.*, pp. 21-22) were all adopted.

If the FPC is right in its brief here, all of these participants in the drafting of the Act and the NARUC and its representatives were deluded.

If the FPC is right here, the Natural Gas Act did not fill a gap, did not preserve the existing State jurisdiction over retail distributing companies, but actually set up another Interstate Commerce Commission type of regulation which reaches into intrastate commerce and State regulation to such an extent that the jurisdiction and activities of State commissions in respect of railroads are now largely perfunctory. We point out that never once did Mr. DeVane, the solicitor for the FPC, indicate that this is what the FPC had in mind at the time. What he should have been saying to the Congressional Committees if he then really thought that the Natural Gas Act could be interpreted to subject practically all the natural gas distributing companies in the United States to FPC jurisdiction was just exactly that; and he never did. Nor did any one else. The "stub line" theory has reared its head since that time.

Now what has the FPC brief to say about this legislative history? It offers "materials from the Act's legislative history" (Brief, p. 31). These "materials" are designed to show that whatever Congress intended generally by the Act, "East Ohio in particular was intended to be covered by it" (Brief, p. 20). The FPC's "materials" lend not the slightest support to this claim:

1. The FPC (Brief, pp. 29-30) calls attention, as if significant, to the fact that the Federal Trade Commission reviewed East Ohio's activities pursuant to Senate Resolution 83 (70th Cong., 1st Sess.) which is referred to in Section 1(a) of the Natural Gas Act. The fact is that the Federal Trade Commission reviewed the activities of 121 natural gas holding and operating companies of which East Ohio was only one (Sen. Doc. 92, 70th Cong., 1st Sess., Part 84-C, App. E-2). Moreover, what the Federal Trade Commission had to say about East Ohio's operations was this:

"All its operations are under the supervision and regulation of the Ohio Public Utilities Commission in addition to the important rights of the cities to negotiate rate franchise agreements directly with the utility." (*Id.*, Part 84-A, p. 560).

We suggest that if these Federal Trade Commission reports are to be incorporated by reference into the Natural Gas Act the foregoing demonstrates that East Ohio was not one of the companies to be covered by a federal regulatory act designed to preserve existing State power.

2. The balance of the legislative "materials" offered by the FPC consists of some nine pages (Brief, pp. 21-29) pointing out with great elaboration that *East Ohio Gas Co. v. Tax Commission of Ohio*, 283 U. S. 465 (1931), was referred to at various times in briefs and discussions. In particular, attention is called to the fact that Mr. DeVane, the FPC solicitor, had presented a brief supporting the constitutionality of the proposed legislation. Mr. DeVane's brief on H. R. 11662 is printed in the report of the Hearings on H. R. 11662 at pages 12-24 and, as the record shows, was placed before each member of the Committee, but nothing further was done about it (*Id.*, p. 12). Mr. DeVane of course cited the *East Ohio v. Tax Commission* case as any one would who was discussing the natural gas cases that had come before this Court.<sup>17</sup>

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<sup>17</sup> The FPC (B., p. 25) points to four citations of the case. The nature of those citations is interesting. (1) "Similarly, the interstate transportation of gas from one State to another has been held to be interstate commerce." (Hearings on H. R. 11662, p. 13.) Four cases are cited, of which the East Ohio tax case was one. (2) "The regulatory power of the Congress over the transportation of natural gas from within the borders of a State to another State is conclusively established by the following authority:" (*Id.*, p. 14) Seven cases are cited of which the East Ohio tax case is one. (3) The facts of the East Ohio tax case were stated (*Id.*, p. 16) as were the facts of the other six cases cited for the proposition that Congress can regulate interstate commerce. There was no comment directed specifically to the East Ohio case. (4) "With respect to the distinction between the transportation of natural gas and high pressure mains and the distribution of such gas locally in low pressure mains, and the power to regulate the former activities, see \* \* \*" (*Id.*, p. 17). The East Ohio tax case is one of six cases cited; and no particular comment was made on East Ohio.

Certainly regulation of substantially all of the distributing companies in the State of Ohio cannot rest on such flimsy and insubstantial evidence of Congressional intention.

What the FPC does not point out is that Mr. DeVane cited some 80 cases of which some 20 involved natural or mixed gas companies. When he adverted to the language of H. R. 11662, he said (*Id.*, p. 16): "Moreover, the regulation of retail rates and *matters incident to local distribution* have been reserved by H. R. 11662 to the States." (Italics ours.)

Hereinbefore in these proceedings the FPC has made a great point of characterizing the plain common-sense viewpoint that the connecting lines of local distributing companies are merely incidental to local distribution as an invention of the local distributing companies and the State commissions to block intended federal regulation. We note that it was Mr. DeVane who first pointed out that "matters incident to local distribution" were not to be regulated by the Natural Gas Act.

3. In the course of its discussion of citations of the *East Ohio v. Tax Commission* case the FPC (Brief, pp. 27-29) makes a special argument about certain amendments which Mr. Benton of the NARUC had recommended in connection with H. R. 5423, which amendments by their terms excluded local distributing companies like East Ohio. Then, the FPC argues (Brief, p. 29), these amendments were not adopted. The facts are these:

The jurisdictional provisions in H. R. 5423 differed radically from the corresponding sections in H. R. 11662 and H. R. 4008 which gave the FPC control over a very limited segment of the natural gas industry. The method used in Title III of H. R. 5423 is that which now appears in Section 201(e) of the Federal Power Act (originally Title II of H. R. 5423) which reads as follows (15 USC, Sec. 201(e)):

"(e) The term 'public utility' when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part."

In the proposed Section 301(b) in Title III of H. R. 5423 it was provided among other things: "Every person who owns or operates facilities subject to the jurisdiction of the Commission under this Title shall be subject to the provisions of this Title." The facilities which were to be subjected to the jurisdiction of the FPC included not only those used for interstate transmission or sale of gas but also (*Ibid.*) " \* \* \* all facilities connected therewith as parts of a system of natural gas transmission situated in more than one state, except facilities for the retail distribution of natural gas, \* \* \*."

This definition quite obviously went so far that any sizable company engaged in the local distribution of gas would have been subject to FPC jurisdiction. Accordingly it was essential for the NARUC to insist upon such an amendment in order to limit federal jurisdiction in a manner which the NARUC considered absolutely indispensable.<sup>18</sup> Mr. Benton therefore suggested amendments to exempt local distributing companies, such as East Ohio, from becoming subject to FPC jurisdiction merely because they had or connected with some facilities which might fall within the broad language of the proposed Section 301(b) of H. R. 5423.

When H. R. 6586 which became the Natural Gas Act was drafted this prior method which had been used in the 1935 Act was not used. Instead the present language of Section 1(b) of the Natural Gas Act was framed which makes the provisions of the Act apply to certain businesses rather than have jurisdiction of the FPC attach because a

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<sup>18</sup> Mr. Benton in beginning his statement in the Hearings on H. R. 5423 had explained that the NARUC had seen previous federal legislation gradually grow and encroach upon the wholly adequate regulation conducted by the several State commissions. He stated that the NARUC wanted federal regulation of interstate wholesale service and that it did not and could not approve federal regulation which extended beyond interstate wholesale service. (Hearings on H. R. 5423, pp. 1624 *et seq.*)

gas company might own one or more particular *facilities*. It provides, as we have seen, that the provisions of the Act shall not apply to the "local distribution of natural gas or to the facilities used for such distribution."

4. There is some legislative "material" actually dealing with East Ohio, but this the FPC's brief omits.

When H. R. 4008 was being considered in committee, Mr. Justice Burton, then Mayor of Cleveland, appeared on behalf of the City of Cleveland, the single largest community served by East Ohio. He testified at some length before the Committee and made specific references to the situation existing in the City of Cleveland and its relations with East Ohio and Hope. (Hearings on H. R. 4008, pp. 48-52.) There is absolutely no indication of any kind in Mayor Burton's testimony that he desired any federal regulation of East Ohio. He explained to the committee that the Ohio Commission had been investigating the Cleveland rates and stated specifically that they were "getting all of the facts in Ohio." (*Id.*, p. 50.)

Mayor Burton explained that the only trouble that Cleveland had with its gas situation was in the determination of the proper price which East Ohio should pay for the gas which it bought from Hope and that the entire situation could be handled perfectly satisfactorily if the price to be paid to Hope were subjected to federal regulation.

Also William C. Reed, Chairman of the Public Utilities Committee of the Cleveland Council, appeared before the Committee considering H. R. 4008. He too testified at considerable length and with specific reference to East Ohio. (Hearings on H. R. 4008, pp. 87-95.) Nowhere in his testimony did he suggest any necessity for regulating East Ohio. He made it clear to the Committee that the City of Cleveland was interested in regulation of wholesale service, a service which was performed by Hope and not East Ohio.

Thus the legislative history of the Natural Gas Act, and especially the portion dealing specifically with East Ohio, reaffirms what is obvious—that interstate wholesaling companies were to be federally regulated, and not retail distributing companies like East Ohio.

**II. THE "STUB LINE" THEORY HERE ASSERTED BY THE FPC TO FASTEN ITS JURISDICTION ON EAST OHIO CREATES CONFLICT AND CONFUSION BETWEEN FEDERAL AND STATE REGULATION OF NATURAL GAS DISTRIBUTING COMPANIES AND WILL ULTIMATELY SUBSTITUTE FEDERAL REGULATION FOR STATE REGULATION.**

**A. Basing Federal Jurisdiction Solely on the Mechanical Movement of Natural Gas Necessarily Creates Confusion in Federal and State Regulation.**

The mechanics of the natural gas industry are extremely simple. Gas lies underground and is tapped by wells. From inside these wells to the burner tips of the ultimate consumers there is a continuous pipe line of various sizes and when gas is being used by the ultimate consumers the gas moves continuously. If the so-called rock pressure at the bottom of the wells is sufficient, no aids to this continuous movement are necessary. If not, pumping stations are required to boost the pressure which gradually declines through line friction. Storage areas enroute, as recently developed in the gas industry, merely constitute a temporary resting place for this gas in this continuous movement.

Now it is obvious that if this continuous movement crosses any State line and the areas of federal and State jurisdiction are to be determined solely on gas mechanics, then there is federal jurisdiction, solely, from the bottom of the well to the consumer's burner tip. This same situation exists with respect to the continuous flow of electricity from generators in one State to the toasters on the break-

fast tables of another State, as this Court pointed out in *Connecticut Light & Power Co. v. Federal Power Commission*, 324 U. S. 515, 529-530 (1945). It was this precise mechanical theory of exclusive federal jurisdiction that was urged upon this Court in *East Ohio Gas Co. v. Tax Commission of Ohio*, 283 U. S. 465 (1931). The concluding paragraph of the brief of appellant, East Ohio, in that case (No. 453 in the October Term, 1930) read as follows:

"The fact is that if this movement is an interstate movement at the time it crosses the Ohio state boundary line, of which there is no dispute, there is no logical or practical place to assert a change in the character of that movement until it reaches the only destination intended for it, namely consumers' appliances. Fiction and not fact will control if it is held otherwise."

This Court, however, refused to accept the ultimate logic of the mechanical test. It suggested as a mechanical answer the doctrine of "breaking bulk" (283 U. S., 471), a doctrine which for a hundred years theretofore had not been applied in the field of State taxation of interstate commerce.<sup>19</sup> Its mechanical answer was not the real one, as it recently pointed out in the *Connecticut Light & Power* case. Referring to the *East Ohio v. Tax Commission* case and *Southern Natural Gas Corp. v. Alabama*, 301 U. S. 148 (1937), it said (324 U. S., 534):

"In neither case was this Court required to determine the exact point at which interstate commerce ceased and intrastate commenced. It was required to find only some 'doing of business' within the state in order to sustain the constitutionality of the statutes involved. In both cases it upheld the power of the state to tax and in both held that the distribution at low pressure was a local business for taxation purposes

<sup>19</sup> *Brown v. Maryland*, 12 Wheat. 419 (1827), gave the doctrine its initial formulation.

as distinguished from transmission in interstate commerce."

As we have seen both from the precise language of Section 1 of the Natural Gas Act and its legislative history, the mechanical test of interstate commerce was not the one applied. *"Production," "gathering," "local distribution" and "the facilities used for such distribution" are all words relating to a business function and operation rather than to the mechanical movement of the gas involved.*

The mechanistic theory of federal jurisdiction reflected in the FPC's "stub line" theory obviously does not make sense in light of the plain purpose of the Natural Gas Act to insert federal regulation in the State regulatory gap created by the prior decisions.

Instead of filling the gap this theory creates constant actual and potential conflict between federal and State regulatory jurisdiction. Who can say at what point in the continuous movement of gas from the bottom of natural gas wells to consumers' burner tips the interstate movement begins or ends as a matter of mechanics? The beginning, mechanically, is as hard to define as the end. In *Interstate Natural Gas Company, Inc. v. Federal Power Commission, et al.*, 331 U. S. 682 (1947), Mr. Chief Justice Vinson said at page 689:

"Nor are we impressed with the suggestion that the interstate movement of the gas should be regarded as beginning when the gas, theretofore moving through petitioner's pipe line system at well pressure, is subjected to increased pressure in the compressor stations of the purchasing companies in order that the gas may be moved to the distant markets. Long before the gas reaches the compressor pumps it has been committed to its interstate journey which follows without interruption or deviation. Under such circumstances, the increase of pressure in the compressor stations must be regarded as merely an incident in the interstate commerce rather than as its origin."

In the *East Ohio v. Tax Commission* case Mr. Justice Butler, not doubting that delivery of gas at East Ohio's burner tips "is not interstate commerce but a business of local concern exclusively within the jurisdiction of the State" (283 U. S., 471), was not so clear as to where interstate commerce, as a matter of mechanics, ended. He indicated a possible line—"when the gas passes from the distribution lines [East Ohio's lines to the Ohio River] into the supply mains, it necessarily is relieved of nearly all the pressure put upon it at the stations of the producing companies" and this treatment "is like the breaking of an original package, after shipment in interstate commerce" (283 U. S., 470-471). However, as the Federal Power Commission points out in footnote 4 on page 7 of its brief, this breaking of the original package is a very gradual process. The fact is that there is a gradual reduction in the 300 pounds or so pressure at the Ohio River and at Maumee to the 4 to 6 ounce pressure at which consumers receive this gas. Does interstate commerce, mechanically, end somewhere along the main lines as pressure falls—and if so at what precise pressure? In the intermediate high pressure lines? Or where those lines connect with the numerous large low pressure mains which connect with the smaller lines in each street or lane?

Referring recently to the *East Ohio v. Tax Commission* case on this point this Court said in the *Connecticut Light & Power* case (324 U. S., 534):

"But a holding that distributing gas at low pressure to consumers is a local business is not a holding that the process of reducing it from high to low pressure is not also part of such local business. In so far as the Commission found in these cases a rule of law which excluded from the business of local distribution the process of reducing energy from high to low voltage in subdividing it to serve ultimate consumers, the Commission has misread the decisions of this Court. No such rule of law has been laid down."

It would take many years of litigation to prick out any line of demarcation between federal and State control if that line is to be determined on gas mechanics. The conflict between the FPC and State commissions and local distributing companies on this point would be endless. Depending upon the shifting views of the members of the Federal Power Commission from time to time, they could either stay within the actual regulatory "gap" which their activities were to occupy, or seek to impose their various authorities upon every natural and mixed gas distributing company in the United States.

The latest example of course is the claim of the legal staff of the Federal Power Commission that Consolidated Edison Company of New York, Inc., The Brooklyn Union Gas Company and the Kings County Lighting Company, all artificial gas companies serving the enormous population of the City of New York, will be "natural-gas companies" subject to FPC jurisdiction because they propose to buy natural gas for mixing purposes from ~~an~~ interstate pipe line company at a delivery point in the City of New York and from there construct a 23 mile high pressure line within the City of New York to reach the several gas plants of these three large local distributing companies (FPC Docket Nos. G-1167, G-1171, G-1190).

These particular local companies have adequate resources to fight this assertion of FPC jurisdiction. However, a similar application of the mechanistic "stub line" theory to hundreds of local distributing companies throughout the nation may well find many of them unable to afford the long litigation necessary to challenge federal jurisdiction when the FPC asserts it as to them. Federal regulation will thus inevitably shove aside State regulation by encroachment and default.

## **B. The Mechanistic "Stub Line" Theory Applied to Give the FPC Jurisdiction over East Ohio Creates Numerous Conflicts with Ohio's Regulatory Jurisdiction over East Ohio.**

A glaring example of the conflict and confusion between FPC and State jurisdiction which inevitably follows from the FPC's "stub line" theory is of course present in the case here of East Ohio.

1. Ohio is a municipal home rule State, with its municipalities having both statutory and Ohio constitutional authority to grant utility franchises and to contract with utilities for gas and other utility services.<sup>20</sup> Under this authority local distributing companies operate by acquiring franchises or rights to use highways and other public places from local municipal authorities. As the record shows here East Ohio, for example, has franchises in each of the 69 incorporated Ohio communities which it serves (Tr. Vol. I, p. 117; Item 11, Ex. C, Tr. Vol. I, p. 82; Tr. Vol. VII, p. 2513). These franchises cover services or rates or both of East Ohio to these various municipalities. They are for various durations some being for periods as short as two years, and many constitute contracts as authorized by Ohio law (Item 11, Ex. C, *supra*).

Let us pause here. Each of these contracts requires service by East Ohio to the inhabitants of the municipality. Such service can only be accomplished by having East Ohio produce or purchase such Ohio gas as it can and in large measure purchase gas from out-of-state sources and bring it home by its "stub lines." Necessarily, each of these contracts requires continued operation by East Ohio of these "stub lines" and each, if the FPC's "stub line" theory is correct, could be claimed to be a contract *relating*

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<sup>20</sup> E.g., Ohio General Code Sections 3982, 3983, 614-44; The Constitution of the State of Ohio (1851), Article XVIII, Sections 1, 3, 4, 5, 7.

to transportation subject to the jurisdiction of the FPC since these contracts require the movement of gas which East Ohio must make through these "stub lines." Section 4(c) of the Natural Gas Act requires contracts "relating to" any transportation service subject to the jurisdiction of the FPC to be filed with it. Section 4(d) provides that no change can be made in any such contract except on 30 days' notice to the FPC and to the public. Under Section 4(e) the FPC apparently has authority to enter into a hearing as to the lawfulness of the service involved in any such contract. Does this mean that Ohio municipalities cannot exercise their existing Ohio statutory and constitutional authority without being subject to the complicated and expensive procedure and supervening jurisdiction of the FPC?

Obviously this was not the intent of the Natural Gas Act. But by the literal words of Section 4, if the FPC's "stub line" theory is correct and the FPC has federal jurisdiction over all aspects of East Ohio's operation of these "stub-lines" as is here claimed, the foregoing ridiculous result would follow. It could, moreover, be supported with the same technical and unrealistic arguments as are presented in the FPC brief before this Court in support of that theory.

2. Except for franchise rates constituting a contract by utility acceptance of an Ohio municipal franchise or Ordinance, all other aspects of these Ohio franchises, including services and rates, are subject to general State jurisdiction. This jurisdiction has been vested in the Public Utilities Commission of Ohio since its establishment in 1911. The Public Utilities Act of Ohio constitutes a complete regulatory act and gives the Ohio Commission complete regulatory jurisdiction over East Ohio and all its activities and properties, since they are all in Ohio. This authority the Ohio Commission has used repeatedly. Ex-

hibit 7 (Tr. Vol. I, p. 128, Tr. Vol. V, p. 2130) is a list of the formal regulatory proceedings before the Ohio Commission involving East Ohio. A summary of these proceedings is as follows (Tr. Vol. I, pp. 128-130):

<u>Ohio Commission Proceedings</u>	<u>No.</u>
Involving rates	160
Involving acquisition or sale of property	77
Relating to issuance of securities	11
Relating to accounting practice	4
Relating to termination or beginning of service	3
General complaints as to service, etc.	3
Total	258

In addition to these formal proceedings East Ohio has been required to file annual reports on forms prescribed by the Ohio Commission, conform to the Ohio Commission's uniform system of accounts, install depreciation rates fixed by the Ohio Commission and submit to investigation and examination of various matters by the Ohio Commission (Tr. Vol. I, pp. 130-131). In the most recent Cleveland rate case,<sup>21</sup> for example, the Ohio Commission examined for depreciation and valued all of East Ohio's property, whether classified in its accounts as production, storage, transmission or distribution, except distribution property outside of the Cleveland area and not involved in the case (R. 24-25). In short, East Ohio has no activities of any kind not under supervision and regulation by the State of Ohio and no public utility service or property not regulated in Ohio (R. 24).

3. Suppose that on the "stub line" theory East Ohio is subject to FPC jurisdiction. What follows?

(a) This means that Section 1 of the Natural Gas Act creates an immediate general conflict with Ohio General

<sup>21</sup> *The East Ohio Gas Company v. City of Cleveland*, 56 PUR (NS) 73 (1944).

Code Sections 614-2, 614-2a and 614-4. Under Ohio General Code Sections 614-2 and -2a East Ohio is a public utility subject to the Ohio Commission's jurisdiction because it is a company "engaged in the business of supplying natural gas for lighting, power or heating purposes to consumers within this state." The Ohio Commission's general jurisdiction extends over all of East Ohio's properties including its "stub lines" since it extends to every public utility "the plant or property of which lies wholly within this state" and to the companies "operating the same, and to the records and accounts and business thereof done within the state" (Ohio General Code Section 614-4).

The Ohio Commission may supervise and regulate so as "to require all public utilities to furnish their products and to render all services exacted by the commission, or by law" (Ohio General Code Section 614-3). It has authority to supervise East Ohio and like Ohio utilities "with respect to the adequacy or accommodation afforded by their service" and "with respect to the safety and security of the public" (Ohio General Code Section 614-8). It of course has authority to examine records (Ohio G. C. Sec. 614-7), to prescribe systems of accounts (Ohio G. C. Sec. 614-10), to compel the furnishing of adequate facilities (Ohio G. C. Section 614-13), to prevent rebates and discrimination (Ohio G. C. Secs. 614-14, -15), to fix and order changes in rates other than those fixed by municipal agreement (Ohio G. C. Secs. 614-20 *et seq.*), to hear appeals from and set aside unaccepted ordinance rates and fix substitute rates (Ohio G. C. Secs. 614-44 *et seq.*), to prescribe the form of annual reports (Ohio G. C. Sec. 614-48), to prescribe proper depreciation charges and require the setting up of a depreciation fund (Ohio G. C. Secs. 614-49, -50), to authorize the issuance of securities (Ohio G. C. Sec. 614-53), to approve or forbid the purchase or sale of other utility property (Ohio G. C. Sec. 614-60), and many other usual regulatory powers.

Now as to what the FPC says is interstate commerce on East Ohio's "stub lines"—who has jurisdiction, the FPC, or the Ohio Commission—and if both have it, who is to prevail if the FPC says one thing and the Ohio Commission another? As we understand the FPC brief, the FPC is to prevail; and any action taken by the Ohio Commission with respect to these lines under any of the Ohio Commission powers referred to above is presumably at sufferance. This conflict of jurisdiction is no light matter.

Obviously the Ohio Commission must determine the valuation, operating expenses and return in respect of these lines in connection with its review or fixing of municipal and other local rates, just as it has done many times in the past with respect to East Ohio.<sup>22</sup> If the Federal Power Commission issues an order stating that these lines are to be valued at their depreciated original cost, which is contrary to the Ohio statutory rule on valuation,<sup>23</sup> is the Ohio Commission bound by that order? Upon the Federal Power Commission theory here advanced it apparently would be since the FPC is claimed to have exclusive jurisdiction over these "stub lines."

(b) Under Section 4(b) of the Natural Gas Act the FPC has claimed authority to allocate gas from interstate pipe lines in times of emergency (*City of Detroit v. Panhandle Eastern Pipe Line Co.*, 73 PUR (NS) 371 (FPC

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<sup>22</sup> *The East Ohio Gas Company v. City of Cleveland*, 4 PUR (NS) 433 (1934); *Re East Ohio Gas Company*, 17 PUR (NS) 433 (1937); *The East Ohio Gas Company v. The Public Utilities Commission of Ohio, etc.*, 133 Ohio St. 212; 12 N. E. 2d 765 (1938); *East Ohio Gas Company v. City of Cleveland*, 27 PUR (NS) 387 (1939); *The East Ohio Gas Company v. Public Utilities Commission of Ohio, City of Cleveland v. Public Utilities Commission (Two Cases)*, 137 Ohio St. 225, 28 N. E. 2d 599 (1940); *The East Ohio Gas Company v. City of Cleveland*, 56 PUR (NS) 73 (1944).

<sup>23</sup> Ohio General Code Sections 499.9, 499.13; *City of Marietta v. Public Utilities Commission*, 148 Ohio St. 173, 74 N. E. 2d 74 (1947).

1947); *Council Bluffs Gas Co. v. Northern Natural Gas Co.*, CCH UTIL. LAW REP. (Fed.) ¶ 9082 (FPC 1948)). Under Ohio General Code Sections 614-8, -15 and -32, and its general authority under the sections referred to above, the Ohio Commission has jurisdiction to determine how gas should be distributed by East Ohio in times of emergency (*City of Akron v. The Public Utilities Commission of Ohio*, 149 Ohio St. 347, 78 N. E. 2d 890 (1948)). Does the FPC or Ohio say who shall get the gas which East Ohio carries through its "stub lines"? Under the FPC theory here presented the FPC has exclusive jurisdiction and it is its function to decide the restrictions to be placed on the movement of this gas in Ohio rather than Ohio's function.

(c) Under Section 6(b) of the Natural Gas Act a "natural-gas company" may, among other things, be required to "keep the Commission informed regarding the cost of all additions, betterments, extensions and new construction." Under the Ohio statutes the Ohio Commission has similar authority (e.g. Ohio General Code Section 499-11). Thus the FPC can require East Ohio, on the "stub line" theory of jurisdiction, not only to report additions, betterments, extensions and new construction on its "stub lines" but every change it makes in its thousands of miles of mains in Ohio streets, alleys, highways and lanes. There may here be no precise conflict of jurisdiction, but there is certainly an obvious duplication and a direct economic conflict in that the great expense of this duplication falls upon Ohio consumers.

(d) Under Section 7(a) of the Natural Gas Act the FPC may direct a "natural-gas company" to "extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribu-

tion of natural or artificial gas to the public" etc.<sup>24</sup> As we have seen, under Ohio General Code Sections 614-8, 614-27 and 614-28, jurisdiction over the adequacy of all of East Ohio's facilities is lodged in the Ohio Commission and it has authority to order improvements to promote the convenience or welfare of the public and to secure adequate service. Laying aside the question of whether either the FPC or the Ohio Commission could constitutionally order East Ohio to render a service through its "stub lines" which it has not undertaken, is it the FPC or the Ohio Commission, or both, who have jurisdiction to order it to improve its "stub line" facilities, or to make sales to particular Ohio communities? If the views of the two commissions conflict, which should prevail?

The manner and efficiency of East Ohio's distribution of gas which it acquires from State and out-of-state sources is obviously a matter of purely local concern, yet these particular local problems are to be transferred to Washington under the FPC "stub line" theory. The FPC's brief here specifically so argues (p. 47).

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<sup>24</sup> The legislative history indicates clearly that Section 7(a) was never intended to apply to a company like East Ohio. At the hearings on H. R. 11662, Mr. DeVane undertook to explain Section 7(a) to the Committee. His statement makes it clear that the situation which the draftsmen of the Act were trying to reach was that in which a company owning gas fields and shipping gas in interstate commerce for resale failed to fill their pipeline to capacity when their fields were entirely adequate to fill the line. When asked what the conditions precedent were before Section 7(a) would authorize the Commission to order an extension, Mr. DeVane said: "I was trying to state the conditions precedent in my answer to Mr. Cole's question. There must be all of those conditions precedent. The company must have the gas; you cannot make the company go out and buy gas to fill its pipelines to capacity; it must have extra capacity in its pipeline, and the line must be in close proximity to the community. Now, if all those conditions precedent are present, then the authority is conferred upon the Commission to require the service to the community." (Hearings on H. R. 11662, p. 39.)

(e) Under Section 7(b) of the Natural Gas Act the FPC is given authority to control abandonment of facilities subject to its jurisdiction or any service rendered by means of such facilities. Under Ohio General Code Sections 504-2 and 504-3 the Ohio Commission is given authority in respect of the abandonment of main pipe lines and gas lines. Here there is an obvious conflict of jurisdiction in the event that East Ohio desires to tear up a portion of its "stub lines" for any reason whatsoever. And if the FPC is to have exclusive jurisdiction in this respect, what can be the basis of any proper determination except local service matters which have always been and should continue to be within the province of Ohio's jurisdiction?

(f) Under Section 7(c) of the Natural Gas Act the FPC has authority to grant or withhold certificates of convenience and necessity as to the construction or operation of any facilities involved in the transportation or sale of natural gas subject to its jurisdiction.<sup>25</sup> Let us suppose,

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<sup>25</sup> Completely ignoring the history and purpose of Section 7(c), the FPC has argued that it is a provision of the Natural Gas Act showing the applicability of the statute to a company like East Ohio. Section 7(c) was not included in H. R. 11662 but was inserted when the bill was redrafted as H. R. 4008. At the hearings on this latter bill, a question arose as to who had put the provision in and why. (Hearings on H. R. 4008, p. 81.) Representative Lea, chairman of the Committee, stated that he would "assume responsibility for authorship of Section 7(c)." *Ibid.* He was then specifically asked why he had put Section 7(c) into the redrafted bill. Chairman Lea explained that he thought it was only fair that protection against competition should be given to the companies which were brought under rate regulation for the first time and that Section 7(c) was designed to accomplish that purpose. (*Id.* pp. 82-83.)

The form in which Section 7(c) was originally enacted makes it further clear that this was the purpose of that portion of the Natural Gas Act. It required a certificate of public convenience and necessity only when the area served by one "natural-gas company" was to be invaded by another "natural-gas company." The purpose quite obviously did not extend to any broad regulation of the gas resources of the nation but was rather a protection

(Continued on following page)

as happens to be the fact, that East Ohio proposes to extend its local service to the Village of Brecksville, which is a Cleveland suburb. In order to do so East Ohio would have to arrange, and as a matter of fact has arranged, for a franchise and made a contract as to rates with Brecksville. This additional local service will necessarily involve some additional construction in connection with its "stub lines." Before East Ohio can render this service, must it and the Village of Brecksville run down to Washington to convince the FPC that this local service is in the public interest? The Ohio Commission is satisfied that East Ohio has ample resources and adequate gas supplies for this additional local service. It therefore has no occasion to exercise its statutory authority to stop such service in the interest of other presently attached consumers of East Ohio. Intervention by the FPC in this situation would clearly be direct interference with local distribution and local distribution facilities.

(g) Under Section 8(a) of the Natural Gas Act the FPC has authority to require a "natural-gas company" to follow its prescribed method and system of accounting. The Ohio Commission has similar statutory authority as to East Ohio (Ohio General Code Sections 614-10, 499-10). Here the Natural Gas Act recognizes the possibility of a gas company being required to keep accounts both for the FPC and for a State Commission. This proviso is of course necessary in those cases, which were familiar to

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*(Continued from preceding page)*

for the interstate wholesale service which previously had been unregulated and was brought under regulation for the first time in the Natural Gas Act.

Section 7(c) was, of course, amended in 1942 (56 Stat. 83) to provide for a much broader regulation. But in determining the companies which were intended to be regulated as "natural-gas companies" we must look to the Act as it was enacted in 1938. In the 1938 Act, Section 7(c) was not intended as an independent regulatory provision which could broaden the scope of the term: "natural-gas company."

the drafters of the Natural Gas Act, in which a pipe line company not only sold gas to local distributing companies and municipal plants along its lines but also engaged directly in the local distribution of gas. In such cases there is unfortunately no way of eliminating the economic conflict involved unless the State Commission for all practical purposes abdicates.

In the case of East Ohio where there is no reason for duplicate accounting, except the FPC's purely mechanical "stub-line" theory, the economic conflict is indeed great.

To develop the information required by the FPC accounting and other orders here under consideration, East Ohio would be required to establish and maintain a completely new and entirely different accounting system at great cost.<sup>26</sup> Since "original cost" studies have to be made according to the FPC of all of East Ohio's property from the date it was first used to fulfill a public utility obligation (Ex. 1, Item 1, Tr. Vol. I, pp. 81-82, R. 69; Ex. 1, Item 5, R. 71; Ex. 1, Item 6, Tr. Vol. IV, p. 1541; Ex. 1, Item 8, R. 74; Ex. 1, Item 21, R. 83), it would require inspection and determination of property and accounts from 1846 to the present time (Sen. Doc. 92, 70th Cong., 1st Sess., Part 83, p. 1697). The initial cost for such a tremendous undertaking has been estimated to be between \$1,500,000 and \$2,000,000, as the record shows (R. 25), and the FPC did not quarrel with this estimate at the hearing. The year-to-year upkeep from here on out will be many hundreds of thousands of dollars. The FPC now claims the estimate is somewhat too high, but offered no testimony to the contrary. Our experience would lead us to believe that the estimate is much too low, since this first batch of accounting data is probably a mere forerunner. This tremendous cost to East Ohio is

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<sup>26</sup> This is so even where the Ohio Commission grants permission to use the FPC system of accounts because the FPC has certain views on "original cost" which the Ohio Commission believes are not necessary for Ohio accounting purposes.

only a part of the State of Ohio's concern, for if the FPC's theories are to prevail, practically every local gas distributing company in Ohio will be put to great expense in furnishing *strictly unnecessary* data to the FPC.

*When all of this tremendous expense has been incurred, there is nothing, nevertheless, that will have been done which can be of any interest or any possible use—either nationally or locally.*<sup>27</sup> Certainly our Ohio residents are not going to be pleased at paying gas bills higher than they need otherwise be in order that reports and original cost studies can gather dust in the files of the FPC.

It makes no practical difference to any one outside of Ohio, and none to the regulatory authorities or residents of Ohio, that a particular service line in a back street of Cleveland cost \$10 or \$20 in 1846 when it was first laid by one of the manufactured gas companies whose properties were merged into East Ohio.

(h) Under Section 9(a) of the Natural Gas Act the FPC has absolute authority to fix the proper and adequate rates of depreciation and amortization of the several classes of property of each "natural-gas company" used or useful in the production, transportation or sale of natural gas. Moreover each such company is required to conform its depreciation and amortization accounts according to the rates so fixed. In this instance there is a direct conflict with the similar authority of State commissions, including Ohio (Ohio General Code Sections 614-49 and 614-50), since Section 9(a) specifies that the State Commissions may disregard such rates as fixed by the FPC *only* "for the purpose of determining rates or charges." Thus the FPC's notions as to depreciation rates and charges for East Ohio's facilities in the 69 Ohio municipalities it serves are to override those of the Ohio Commission, despite the

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<sup>27</sup> Original cost on the FPC theories is of no importance in Ohio rate making. Ohio General Code Sections 499-9 *et seq.*, 499-13 (last sentence); *City of Marietta v. Public Utilities Commission*, 148 Ohio St. 173, 74 N. E. 2d 74 (1947).

fact that the Ohio Commission has long supervised these rates and charges and that their amount is certainly a matter of purely Ohio concern.

This FPC authority has a further indirect conflict with other authority of the Ohio Commission. Under Ohio General Code Sections 614-53, -54 and -55 the Ohio Commission has jurisdiction and must approve issuance of all securities by East Ohio and other public utilities. It is obvious that the amount of depreciation and amortization reserves as well as the current charges to operations for this purpose are matters of great concern in connection with security issues. Under Ohio law, depreciation reserves and current depreciation charges properly used under its supervised administration will result in a certain asset and operating statement upon which proposed securities can be issued. To the extent that the FPC changes these figures, one way or another, it will interfere directly with Ohio's determination as to what securities issues it will approve. In this instance the Ohio regulatory authorities can not disregard what the FPC has determined. They may disregard it, irrespective of its validity in view of local circumstances, only when rates are being determined.

(i) Under Section 10(a) of the Natural Gas Act the FPC may require annual as well as many other reports, all in great detail. The Ohio Commission has similar authority (Ohio General Code Section 614-48). Here again we have the economic conflict involved in burdening Ohio gas consumers with the expense of duplicate and unnecessary reporting.

(j) Under Section 14(b) of the Natural Gas Act the FPC may determine the adequacy or inadequacy of gas reserves held or controlled by a "natural-gas company." Not only this, but it may determine the propriety and reasonableness of the inclusion in operating expenses, capital, or surplus of all delay rentals for unoperated leases. As we have seen, the Ohio Commission has full and ade-

quate authority over the adequacy or inadequacy of East Ohio's facilities. If it deems it necessary to determine the adequacy of East Ohio's gas reserves, it can of course do so. Suppose it finds them adequate or inadequate and the FPC in a duplicate hearing finds them otherwise? Are the public relations and financing of East Ohio and other local distributing companies to be adversely affected by a report of the FPC that differs from a corresponding conclusion of the Ohio Commission?

Moreover in Ohio the matter of treatment of delay rentals in operating expenses and valuation both for accounting and rate making purposes has received extensive consideration by the Ohio Commission and the courts.<sup>28</sup> This matter is now settled in Ohio and to the satisfaction of every one. In the last Cleveland rate case (*The East Ohio Gas Company v. City of Cleveland*, 56 PUR (NS) 73 (1944)), neither side appealed to the Supreme Court of Ohio, although such appeals had theretofore been frequent. Indeed, since this litigation East Ohio has had no rate litigation before the Ohio Commission. Nevertheless under Section 14(b) the FPC apparently has exclusive jurisdiction, if such local distributing companies as East Ohio are held to be "natural-gas companies" under the Act, to upset this settled and accepted method of handling delay rentals for all purposes.

Thus it is apparent that numerous actual statutory conflicts in jurisdiction as well as distressing economic conflicts arise as soon as any theory is propounded that local Ohio distributing companies become subject to FPC jurisdiction on account of their "stub line" connections to interstate sellers. A few of these actual and potential conflicts we have noted. Many more will arise over the

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<sup>28</sup> E.g., *The East Ohio Gas Company v. Public Utilities Commission, City of Cleveland v. Public Utilities Commission* (Two Cases), 137 Ohio St. 225, 28 N. E. 2d 599 (1940).

course of the years unless the FPC's "stub line" theory is denied by this Court, as it should be.

In this connection we again note that if the general words as to transportation in interstate commerce in Section 1 of the Act are confined to their common sense meaning—the *business* of transporting natural gas—all of this conflict and confusion disappear. A gas company, even though operating solely within Ohio, which transports interstate gas for others for hire or transports interstate its own gas for sale at wholesale would properly be subject only to FPC jurisdiction. All of its accounting, its reports, its operations, supervision of its facilities as to adequacy or inadequacy and so on—could then, as they properly should under such circumstances, be controlled only by the FPC.<sup>29</sup>

As to this type of company there was of course a regulatory gap, and it was obviously this gap as to interstate transportation that was intended to be filled by Congress. There was no intent to create the conflict and confusion, exemplified in the preceding discussion as to East Ohio, which result from the solely mechanical approach upon which the FPC's "stub line" theory is predicated.

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<sup>29</sup> Should such a company, or one of similar operations whose lines cross into another State, sell gas from its pipe lines for industrial purposes, the Ohio Commission, which has the authority to regulate such an industrial rate (*Panhandle Eastern Pipe Line Company v. Public Service Commission of Indiana*, 332 U. S. 507 (1947)), could secure the help of the FPC under Section 5(b) of the Natural Gas Act. This is an instance of the harmony with and assistance to State regulation which were often referred to in the Hearings.

**III. THE FPC ORDERS HERE INVOLVED, AND ANY PROVISIONS OF THE NATURAL GAS ACT CONSTRUED TO AUTHORIZE THEIR ISSUANCE, CONSTITUTE AN INVASION OF THE POWERS RESERVED TO THE STATE OF OHIO UNDER THE TENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND AN INVALID EXTENSION OF THE POWERS DELEGATED TO THE FEDERAL GOVERNMENT BY ARTICLE I, SECTION 8, THEREOF.**

It is of course conceded by the FPC that except for East Ohio's "stub lines" it is engaged in purely intrastate activities. As the record shows, these "stub lines" are a very small fraction of the total of the pipe line mileage of East Ohio's system. They are necessarily a small fraction of its total facilities. On the other hand the accounting and other orders here involved require information and data as to *all* of East Ohio's properties. There is presented a very real question—even if the Natural Gas Act specifically authorizes these FPC orders. As to a company like East Ohio can such orders and the statutory provisions under which they are issued be sustained under the Federal Constitution?

Since the decision of the Supreme Court in *Electric Bond & Share Company v. Securities and Exchange Commission*, 303 U. S. 419 (1938), there can be no doubt that provisions for the control of accounting and requirement of information are in themselves a "type of regulation" (303 U. S., 437, 439). Here the FPC's insistence on its accounting procedure and requests for statistics and information on *all* of East Ohio's properties—down to every last bit of its piping in Ohio streets and alleys—is obviously a regulation of intrastate commerce. Congress may not regulate intrastate commerce, since such power is not delegated to Congress but specifically reserved to the States (United States Constitution, Article I, Section 8, Tenth Amendment).

Clearly a matter does not cease to be intrastate within this constitutional doctrine just because one person or company conducts business both intrastate and interstate. Cf.

*Public Utilities Commission v. Attleboro Steam and Electric Co.*, 273 U. S. 83 (1927). Yet in the FPC view of the Constitution a person doing both *ipso facto* can never resist—nor can the State where he does local business—complete and detailed federal regulation of all of his business, both interstate and intrastate.

The case of *Interstate Commerce Commission v. Goodrich Transit Company*, 224 U. S. 194 (1912), on which the FPC relies (Brief, pp. 77-78) does not support this FPC view. That case of course is based upon a sound and realistic approach to constitutional questions. If the fact is that regulation of interstate commerce which Congress has undertaken *reasonably requires* intrastate data or Congressional accounting as to intrastate business and facilities, Congress may require it. The obvious error in the FPC argument arises from its failure to recognize that there is no reasonable relationship between the information and accounting required by the FPC as to all of East Ohio's properties and the Congressional regulation—if actually intended and obviously it was not intended—of East Ohio's "stub lines."

At most the FPC claims that the abandonment, enlargement or connection to others of these Ohio lines could be supervised by it under Section 7. On the issues so involved, reports and accounting on these lines could have very little usefulness and certainly reports and accounting on the great balance of East Ohio's properties would have absolutely none.

The fact is that the FPC does not present a single argument to show the *reasonable necessity* of its orders here involved in order to enable it to exercise the regulatory powers which it claims over East Ohio's "stub lines." Unless there is such a reasonable necessity (and here there is none, the orders here involved and any provisions of the Natural Gas Act construed to support them must fall under the practical concepts of State and federal power which are incorporated in the Constitution.

It is noteworthy that the Natural Gas Act itself, e.g.,

Section 8(a), prescribes that the FPC's regulatory tools are to be used "as necessary or appropriate for purposes of the administration of this Act." Assuredly this does not mean that the FPC has unlimited power to gather whatever information it wants irrespective of its scope, expense imposed and actual usefulness. Congress did not set up the FPC as an unlimited inquisitorial agency. When challenged, as here, the FPC should be able to establish the necessity and appropriateness of the information it seeks. Here it has not even tried to do so.

We hardly need again point out that the drafters of the Natural Gas Act were imbued with one dominant purpose. That was to keep the jurisdiction of the FPC within plain constitutional limits so far as federal and State powers were concerned, and to avoid any suggestion of infringing on the powers reserved to the States and their Commissions. It seems apparent to Ohio and to the Ohio Commission that the FPC's utter misconception of its field in the assertion of its "stub line" theory against East Ohio not only violates the express language and the declared purpose of the Natural Gas Act, but reaches into the realm of exclusive State jurisdiction which the United States Constitution preserves to Ohio.

Respectfully submitted,

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